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APR 15 2009

OFFICE OF PETITIONS

In re Application of	:	
David Eugene Hirth	:	
Application No. 09/939,227	:	DECISION ON PETITION
Filed: August 24, 2001	:	
Attorney Docket No. 284-09555-US	:	
(D5407-25)	:	

This is a decision in response to the petition, filed February 20, 2009, under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application. This is also a decision on the petition filed January 14, 2009, under the provisions of 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **GRANTED**.

This application was held abandoned for failure to reply to the non-final Office action mailed May 22, 2008, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on December 8, 2008.

Petitioner asserts that the Office action dated May 22, 2008 was not received.

A review of the application file reveals no irregularities in the mailing of the Office action mailed May 22, 2008. Thus, there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Office action, petitioner must submit evidence to overcome this presumption. The following showing is required:

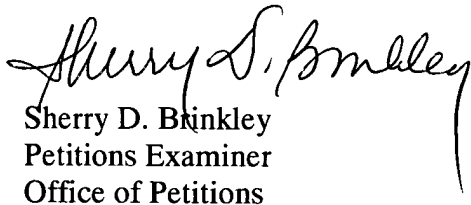
Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if an one month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date one month from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has adequately supported his claim of non-receipt with such evidence. Accordingly, the Notice of Abandonment mailed December 8, 2008 is hereby vacated.

In view of the above, the petition under 37 CFR 1.137(b) is unnecessary and is **DISMISSED AS MOOT**. The \$1,620 petition fee is being refunded to counsel's deposit account as requested.

This application is being referred to the Technology Center technical support staff of Art Unit 3672 for (1) withdrawing the holding of abandonment and (2) for appropriate action by the Examiner in the normal course of business on the reply received on January 20, 2009.


Sherry D. Binkley
Petitions Examiner
Office of Petitions